

INDIAN AFFAIRS MANUAL

Part 28

Human Capital Management

Chapter 335

Merit Promotion and Placement Plan

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- 1.1 Purpose.** This chapter revises the 1992 Merit Promotion and Placement Plan for Indian Affairs (IA). Appointments made under the authority of title 25 U.S.C. Chapter 472 (Indian Preference) are covered under the Indian Affairs Excepted Appointments Plan.
- 1.2 Scope.** This plan applies to filling positions under the authority of Title 5, U.S.C. Chapter 33 and 5 CFR 335 to include all positions under the Assistant Secretary-Indian Affairs (AS-IA) that primarily and directly relate to the provision of services to Indians, in the Bureau of Indian Affairs (BIA) and all positions except Contract Educator positions in the Bureau of Indian Education (BIE).
- 1.3 Policy.** It is the policy of IA to apply merit principles when filling positions by merit promotion procedures.
- 1.4 Authority.**
- A. 5 U.S.C. Chapter 33**
 - B. 5 CFR 335, Promotion and Internal Placement**
 - C. P.L. 96-135, the Indian Civil Service Retirement Act**
 - D. Human Resources Merit Promotion and Excepted Service Guide.** Specific procedures and forms for implementing this policy are found in the Human Resources Merit Promotion and Placement Desk Guide (28 IAM 335-H). The Desk Guide is developed, updated and issued by the IA Office of Human Capital Management (OHCM).
- 1.5 Applicability of Indian Preference in Filling Positions.** Indian Preference will be afforded to qualified Indians meeting the job qualification standards established by the Office of Personnel Management (OPM) for all positions under the AS-IA that primarily and directly relate to the provision of services to Indians, in the BIA, and in all positions in the BIE. Indian Preference will be applied to these positions whether the placement action involves initial hiring, reinstatement, reemployment, transfer, reassignment, or promotion.
- The provisions of this Merit Promotion and Placement Plan (under the authority of Title 5 U.S.C. Chapter 33) apply to selections of qualified candidates (both Indian Preference candidates and non-Indian candidates).
- The provisions of the IA Excepted Appointments Plan (under the authority of Title 25 U.S.C. Chapter 472) apply to selections of qualified Indian Preference candidates over qualified non-Indian Preference candidates.

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Selections may be made at any grade level as long as there is compliance with the Indian Preference policy in the selection process. A non-Indian candidate may not be considered at any grade level if there is a qualified Indian Preference candidate available.

A tribe may grant, in writing, a waiver of the application of Indian preference laws when recommending selection of a Bureau non-Indian employee. When a non-Indian accepts a position under this provision, any entitlement he or she might have to retirement under Public Law 96-135 is thereby cancelled.

1.6 Covered Actions. This plan covers:

- A. Initial appointments to covered positions.
- B. Permanent promotion to a higher-graded position or to a position with a higher full performance level than previously held on a permanent basis in the competitive service.
- C. Temporary promotion for over 120 days.
- D. Detail of more than 120 days to higher grade position or to a position with greater promotion potential than previously held on a permanent basis in the competitive service.
- E. Reassignment, transfer, reinstatement or change to lower grade to a position with promotion potential higher than any position held on a permanent basis in the competitive service.
- F. Term appointments and term promotions to higher graded positions.
- G. Promotion of a previously downgraded employee. A previously downgraded employee may be re-promoted to the grade from which previously demoted if the demotion was without personal cause.
- H. Excepted appointments to a higher grade, or to a position with promotion potential higher than the last grade held in a non-temporary position in the excepted or the competitive service.
- I. Selection for training designed to prepare an employee for advancement and is a requirement for promotion.

1.7 Exceptions. This plan does not apply to:

- A. **Executive Positions.** Positions in the Senior Executive Service (SES).

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- B. **Contract Educator** positions in the BIE.
- C. **Career Ladder Promotion.** Promotion without current competition because the employee previously competed and was selected for an assignment intended to prepare him/her for the position and grade level being filled, and the intent was a matter of record and made known to all potential candidates.
- D. **Classification Standard or Correction of Classification Error.** The promotion of an incumbent of a position which is upgraded without significant changes in duties and responsibilities due to issuance of a new classification standard or correction of an initial classification error.
- E. **Reduction-in-Force.** A change permitted by reduction-in-force regulations.
- F. **Special Employment Program.** Appointment of disabled veterans with 30% or more compensability; veterans readjustment appointments; conversions of Student Career Experience Program (SCEP) students; appointment of the disabled, Peace Corps, and Vista volunteers; or appointments under a special employment program authority.
- G. **Temporary Promotion of 120 Days or Less.** A qualified employee may be promoted noncompetitively not to exceed 120 days.
- H. **Temporary rehire** appointment authority to make and extend temporary appointments to positions involving intermittent or seasonal work involving intermittent or seasonal work.
- I. **Detail to a Higher Graded Position NTE (not to exceed) 120 days.** An employee may be noncompetitively detailed to a higher graded position not-to-exceed 120 days.
- J. **Detail to same grade,** lower graded, unclassified position made in 120-day increments not-to-exceed 1 year.
- K. **Promotion of a Previously Downgraded Employee.** A previously downgraded employee may be non-competitively promoted to the grade from which previously demoted if the demotion was without personal cause, and the promotion action is consistent with Indian Preference.
- L. **Accretion of Duties.** A promotion resulting from an employee's position being reclassified at a higher grade (with no further promotion potential) because of additional duties and responsibilities. Refer to the Desk Guide for guidance.

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- M. Consideration and/or selection of a candidate not given proper consideration in a previous competitive promotion action.
 - N. Corrective placement actions based on legal orders, department finding and direction.
 - O. **Excepted Service.** Includes all positions in the executive branch of the government which are specifically excepted from the competitive service by or pursuant to statute, by the President or by OPM, and which are not in the SES.
 - P. **Reemployment.** The hiring of a former Excepted Service employee under Schedule A, 213.3112(a)(7), Indian Preference.
 - Q. **Realignments.** An employee and his position may be moved anywhere within the Department of Interior (DOI) without competition and without regard to Indian Preference when the function the employee performs is moved from one organization or activity within DOI to another.
 - R. **Redescription.** Indian Preference is not required when a vacancy does not exist. When an employee is reassigned because of the addition, deletion or modification of duties and responsibilities of the employee's position provided such changes constitute a redescription of an encumbered position rather than the filling of a vacancy. The resulting description is considered a redescription, if the employee continues to perform the same basic function with the former duties being absorbed into the redescribed position.
- 1.8 Reassignment of Non-Indians.** It is the policy of IA under the provisions of Public Law 96-135 that individuals who are not entitled to Indian Preference may be reassigned where such reassignment is for the benefit of the service/bureau. Typical reasons for such a request might include safety, health, reduction in force, or other unforeseen circumstances as determined by the bureau.

A. Procedures for Documentation of Individual Cases:

1. To assure the health or safety of the employee or any member of the employee's household, the Administrative Official in charge must submit the following:
 - a. For health cases:
 - i. A narrative description of the health problem including any and all reasons for the health problem of which he/she is aware.
 - ii. A written medical report based upon a recent (90 days) physical examination by a licensed physician, which describes in detail the health problem and the probable cause, if it is known, including a request filed by the employee or any member of the employee's household. The doctor should be asked to identify conditions necessary to alleviate health problems.
 - iii. A description of the interim actions which the official is taking to limit or alleviate the health problems.
 - b. For safety cases:
 - i. Narrative description of the safety problem.
 - ii. A statement by the Area Special Officer or Area Safety Officer of his/her assessment of the threat and his/her ability to provide adequate security for the employee.
 - iii. A recommendation on the ultimate issue of whether the assignment of the employee is proper and promotes the efficiency of the service.
 - iv. A statement by the employee that he/she is aware of the proposed action and that he/she may submit a written statement which will be considered before a final decision is rendered.
2. All reduction in force requests to reassign non-Indians will be sent to the AS-IA, ATTN: Human Resources (HR) Officer. The name, series, grade and level of performance of each employee will be provided.
3. If the employee's working relationship with a tribe has so deteriorated through no willful act by the employee that he/she cannot provide effective service for such tribe, the Agency Administration Official must provide documentation which contains:
 - a. A statement with specificity and detail which explains how the deterioration occurred.
 - b. A written statement that the employee has been notified of the actions taken. The employee must be given a reasonable time of not less than ten days to submit a written response.

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- c. A statement of the efforts such official has made to informally resolve the matter.
- d. A recommendation as to the ultimate issue of whether a reassignment is proper and promotes the efficiency of the service.

B. Approving Authority:

The Secretary, DOI, Deputy Secretary, DOI or the AS-IA are authorized to grant approval for reassignments. Requests to make reassignments will be directed to the Human Resources Officer.

1. A request to reassign an employee should be submitted in advance to allow at least 45 days for processing the approval.
2. Upon receipt of approval, the requesting office will be notified by telephone of the approval. A written confirmation of the approval will follow.

1.9 Management Discretion. Nothing in this plan restricts management's right to fill any position by some other appropriate means such as reinstatement, reemployment, transfer, or reassignment or other means consistent with the Indian Preference statute and this plan. Management has the right to select or not to select from best qualified candidates. However, a determination as to the availability of qualified Indian Preference candidates must be made and documented before a non-Indian candidate may be selected.

1.10 Grievances. The servicing HR office will respond promptly to questions about the merit promotion and placement program or about a specific selection action. Employees may submit a grievance concerning merit promotion matters under the Department's grievance program (370 DM 771), or under a negotiated grievance procedure, as appropriate, unless otherwise excluded from either process. If bargaining unit employees wish to grieve any merit action, they must use the negotiated grievance procedures rather than the DOI's grievance program. If anything in this plan conflicts with a negotiated agreement, the agreement prevails. However, non-selection from a list of properly ranked and certified applicants is not grievable under either process. Further, an employee cannot use the grievance procedures and the Equal Employment Opportunity (EEO) complaint process at the same time for the same issue.

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1.11 Exceptions, Waivers, and Changes of this Plan. The Director, Human Capital Management, Office of the AS-IA is delegated the authority to make exceptions, grant waivers, and issue changes to this plan provided the action is consistent with the Indian Preference statute and all personnel and EEO laws and regulations, as well as OPM and DOI policies, procedures, and guidance. These exceptions will be shared with the servicing HR office as appropriate, and documented in the case file if applicable to a specific announcement.

1.12 Responsibilities.

A. The Deputy Assistant Secretary – Management is responsible for the overall management and administration of OHCM policy for IA.

B. The Office of Human Capital Management is responsible for overall policy and direction to bureaus and offices with regard to effective human resources management.

C. Director, BIA and Director, BIE are responsible for implementing and supporting the IA Merit Promotion and Placement Plan, and for assuring operational guidance ensures that selections are based on merit, after fair and open competition, and are consistent with Indian Preference.

D. IA Management. Management will ensure that their actions in the selection process, as well as selection decisions, are consistent with the IA Merit Promotion and Placement Plan, merit principles, Indian Preference law, and other applicable laws and regulations. Management has the right to select or not select from among properly ranked and certified candidates, to select from other appropriate sources, and to promote or not to promote an employee based on merit factors.

E. Human Resources Professionals are responsible for implementing the IA Merit Promotion and Placement Plan; advising managers and selecting officials to ensure that selections produce a quality workforce to accomplish the mission and goals of DOI and IA; providing periodic education and training to management and employees on the IA Merit Promotion and Placement Plan, practices, selection procedures, and merit principles; and evaluating the implementation of IA operational procedures and updating the procedures as needed. Human resources professionals will make a determination as to the availability of eligible Indian candidates before a non-Indian may be reassigned, transferred, or appointed to a position.